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CITIZENSHIP AS A GROUND FOR PERSONAL JURISDICTION. — The New York Court of Appeals has recently refused to recognize a judgment of a foreign court whose jurisdiction was based solely upon citizenship. *Grubel* v. *Nassauer*, 210 N. Y. 149. The defendant was a Bavarian subject domiciled in New York. He had filed notice of his intention of becoming a United States citizen, but before naturalization the judgment was secured against him on valid service by publication in Bavaria. Admitting the defendant's allegiance continued Bavarian, the court disregards that fact without giving a reason for doing so, and bases its decision on a case involving no question of citizenship or allegiance.[1] The precise point has apparently been presented only once for decision, but in denying allegiance as a ground for jurisdiction *in personam* the court departs from the reasoned opinions of eminent judges and text-writers.[2]

[1] Pennoyer *v.* Neff, 95 U. S. 714 (1877). The court quotes a passage from this case (p. 727) to the effect that the process of one state has no force beyond its own boundaries, and then says, "It seems to us unreasonable that we should give greater respect to the judgments recovered in a foreign country than to a judgment recovered in one of our sister states." This reasoning involves an obvious *non sequitur*, since in the case quoted from the attempt was to get jurisdiction over a defendant who had no residence or domicile in the state and owed no allegiance thereto.

The court also cites a case in which a Canadian judgment against a Canadian residing in Wisconsin was refused recognition by a Wisconsin court. Smith *v.* Grady, 68 Wis. 215, 31 N. W. 477 (1887). The case is directly in point, but the Wisconsin court disregarded the question of allegiance altogether, relying on a previous Wisconsin case where no question of allegiance was involved.

[2] See Douglas *v.* Forrest (1828), 4 Bing. 686; Cowan *v.* Braidwood, 9 Dow. P. C.

It is to be regretted also that the court takes the view that foreign judgments are enforced solely by virtue of comity. This misleading word suggests that it is out of courtesy to the foreign sovereign that the judgment is enforced, a view which, "if really held by any serious thinker, affords a singular specimen of confusion of thought produced by laxity of language." [3] It is not a question of whether comity should induce us to respect a foreign judgment, or whether we should enforce foreign laws, but whether our law requires us to enforce the right acquired under the foreign law.[4] It is not a question of courtesy, but of the obligation of our own law.

The common-law principle is that courts are bound to enforce the right arising out of a foreign judgment rendered by a court having competent jurisdiction over the defendant, unless the defendant can show special facts making it unfair to do so.[5] Granting jurisdiction, the judgment raises a right in the plaintiff and a correlative duty in the defendant. The question is therefore whether our law considers the bond of allegiance a sufficient ground for conferring upon the sovereign's courts personal jurisdiction over an absent subject, and then, if competent jurisdiction, are there any special facts which negative the court's duty of enforcement.

The duty of obedience to the court's command is the common-law basis for jurisdiction *in personam*.[6] Thus service of process within the state gives competent jurisdiction, since every one within the state's boundaries must obey.[7] The duty assumed by contract by a non-resi-

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26, 35 (1840); General Steam Navigation Co. *v.* Guillou (1843), 11 M. & W. 877, 894; Schibsby *v.* Westenholz (1870), L. R. 6 Q. B. 155, 161; Rousillon *v.* Rousillon (1880), 14 Ch. D. 351, 371; Emanuel *v.* Symon (1908), 1 K. B. 302, 309; Hall *v.* Williams, 23 Mass. 232, 240 (1828); Henderson *v.* Staniford, 105 Mass. 504 (1870); Hunt *v.* Hunt, 72 N. Y. 217, 238, 239 (1878); Huntley *v.* Baker, 33 Hun 578 (1884); *Re* Denick, 92 Hun 161, 36 N. Y. Supp. 518 (1895); Hamill *v.* Talbott, 72 Mo. App. 22 (1897); Ouseley *v.* Lehigh Valley Trust & Safe Dep. Co., 84 Fed. 602 (1897). Also DICEY, CONFLICT OF LAWS, 2 ed., 361; WESTLAKE, PRIVATE INTERNATIONAL LAW, 5 ed., 401; PIGGOTT, FOREIGN JUDGMENTS AND JURISDICTION, Part I, 243 *et seq.*; NELSON, PRIVATE INTERNATIONAL LAW, 360; FOOTE, PRIVATE INTERNATIONAL LAW, 3 ed., 551, 552; WHARTON, CONFLICT OF LAWS, § 649, n. 3; 2 FREEMAN, JUDGMENTS, § 589; 6 HALSBURY'S LAWS OF ENGLAND, 284; note in 50 L. R. A. 577, 586. *Cf.* STORY, CONFLICT OF LAWS, §§ 540, 546, 548.

[3] See DICEY, CONFLICT OF LAWS, 2 ed., 10; FOOTE, PRIVATE INTERNATIONAL LAW, 547, 548; 1 WHARTON, CONFLICT OF LAWS, 3 ed., 2, n. 1, 5. The court in the principal case calls attention to a decision by the Supreme Court of the United States to support the proposition that foreign judgments are enforced by virtue of comity; but it is to be noticed that after an elaborate review of the subject of comity the court in that case comes to a conclusion consistent only with the view expressed above, though it continues to use the word "comity." Hilton *v.* Guyot, 159 U. S. 113, 202 (1894).

[4] See DICEY, CONFLICT OF LAWS, 2 ed., 10, 11; 1 WHARTON, CONFLICT OF LAWS, 3 ed., §§ 1, 1½.

[5] Russell *v.* Smyth (1842), 9 M. & W. 810, 819 (Eng.); Williams *v.* Jones (1845), 13 M. & W. 628, 633 (Eng.); Schibsby *v.* Westenholz (1870), 6 Q. B. 155, 159 (Eng.); WESTLAKE, PRIVATE INTERNATIONAL LAW, 5 ed., 396, 397; WHARTON, CONFLICT OF LAWS, 3 ed., §§ 1, 1½. In the United States this proposition is of course strengthened as between states by the constitutional provision as to full faith and credit. U. S. CONSTITUTION, Art. IV, § 1.

[6] Russell *v.* Smyth (1842), 9 M. & W. 810, 819 (Eng.); Williams *v.* Jones (1845), 13 M. & W. 628, 633 (Eng.); Schibsby *v.* Westenholz (1870), L. R. 6 Q. B. 155, 159 (Eng.); Hunt *v.* Hunt, 72 N. Y. 217, 239 (1878); Huntley *v.* Baker, 33 Hun 578, 580 (N. Y. 1884).

[7] Darrah *v.* Watson, 36 Ia. 116 (1873).

dent foreigner to submit to a court's jurisdiction furnishes a valid ground for personal jurisdiction.[8] Persons domiciled within a territory are bound to obey the sovereign, and are therefore personally subject to his courts.[9] It would seem also that the duties arising out of citizenship ought to be enough to confer personal jurisdiction. Obedience to the sovereign is the first principle of all law. The obligations of allegiance are the foundations of government, and cannot be cast off without consent. Accepting a pension from, or enlisting in the service of, a foreign state without consent has been said to be criminal at common law, because inconsistent with allegiance to one's own sovereign.[10] Allegiance is an essentially bilateral relationship; subject and sovereign are mutually bound.[11] To hold it insufficient to give courts jurisdiction to render personal judgments is to disregard altogether its inherent nature and importance. In America, the ease with which allegiance to one state can be changed for that of another, our policy of free naturalization, and the usual coincidence of domicile and citizenship, have led to the thought of state citizenship as a matter more of convenience than of obligation. This popular tendency, however, can hardly justify the courts in disregarding the element of duty in allegiance. In contrast to this American tendency, English writers have consistently declared allegiance enough for the founding of personal jurisdiction.[12] And the same is apparently true of the other European countries.[13]

However, assuming the jurisdiction, the common law might perhaps refuse to enforce the foreign right acquired while the subject was making a *bonâ fide* attempt to throw off the old allegiance. Furthermore, it does not appear in the reports of the case whether the defendant received notice of the Bavarian proceedings.[14] This want of notice can be urged as a ground for not enforcing the foreign acquired right, since the doctrine of the common law has always been that "it is contrary to the first principles of reason and justice that . . . a man should be condemned before he is heard," [15] or had an opportunity of being heard.[16] But in reaching the result on either of these grounds, the court would not be denying that allegiance is sufficient for personal jurisdiction.

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[8] Grover & Baker Sewing Mach. Co. *v.* Radcliffe, 137 U. S. 287 (1890); Copin *v.* Adamson (1875), 1 Ex. Div. 17 (Eng.). *Cf.* St. Clair *v.* Cox, 106 U. S. 350 (1882).

[9] Douglas *v.* Forrest (1828), 4 Bing. 686 (Eng.); Glover *v.* Glover, 18 Ala. 367 (1850); Hunt *v.* Hunt, *supra*; Huntley *v.* Baker, 33 Hun 578 (1884); Martin *v.* Burns, 80 Tex. 676, 16 S. W. 1072 (1891); *Re* Denick, *supra*; BEALE, JURISDICTION OF COURTS OVER FOREIGNERS, II, 26 HARV. L. REV. 283, 296; PIGGOTT, FOREIGN JUDGMENTS AND JURISDICTION, Part I, 248 *et seq.*

[10] See 3 COKE, INSTITUTES, 144; 1 EAST, PLEAS OF THE CROWN, 81; 4 BLACKSTONE'S COM. 122. The extra-territorial force of allegiance is further emphasized by statutory enactments to the same effect. Foreign Enlistment Act (Eng.), 1870 (33 & 34 Vict. c. 90). *Cf.* Dobree *v.* Napier (1836), 2 Bing. New Cases, 781.

[11] United States *v.* Cruikshank, 92 U. S. 542, 549, 551; 1 BLACKSTONE, 366; 1 WHARTON, CONFLICT OF LAWS, 50.

[12] See note 2, *supra*.

[13] WESTLAKE, PRIVATE INTERNATIONAL LAW, 5 ed., 25 *et seq.*; BEALE, JURISDICTION OF COURTS OVER FOREIGNERS, I, 26 HARV. L. REV. 193.

[14] Grubel *v.* Nassauer, 210 N. Y. 149. See same case in lower court, 71 Misc. 585, affirmed in 148 App. Div. 891.

[15] See Lord Ellenborough in Buchanan *v.* Rucker, 1 Camp. N. P. 63, 66 (1807).

[16] See Fisher *v.* Lane, 3 Wils. 297, 302 (Eng., 1772); Rex *v.* Univ. of Cambridge, 8 Mod. 148, 164 (Eng.); Fracis, Times & Co. *v.* Carr, 82 L. T. R. 698, 703 (Eng., 1900); WHARTON, CONFLICT OF LAWS, 3 ed., § 649, n. 3; 6 HALSBURY'S LAWS OF ENG. 286.